mencement of the trial, and repeated, as a submission at the close of the prosecution, was that there was no case for the respondent to answer. It was to the effect that "nowhere is it stated in section 3 of the Pawnbrokers Enactment (Cap. 85) that contravention of this section is an offence." The learned Magistrate agreed and acquitted the respondent.

The section reads as follows:

"3(1) No person shall act as a pawnbroker except under a licence granted under this Enactment.

Among the four sections providing for penalties and forfeitures under the Enactment, the penalty for pawnbroking without a licence is specifically stated in section 25 as follows:

"25. Every person who shall act as a pawnbroker except under a licence granted under this Enactment shall be liable for a first offence to a fine of one thousand dollars, and for a second, etc."

In the face of words so clear and free from ambiguity laying down the penalty for contravention of section 3, it is a startling proposition to submit — contrary to the numerous examples to be found in our statutes — that the offence and the penalty should be contained in the same clause before the breach of a statutory duty can be punished. Counsel quoted no authority for this extraordinary proposition and I should be very much surprised if any amount of industry should have enabled him to discover one. An Ordinance must be read as a whole, and section 51 of the Interpretation and General Clauses Ordinance sets out all that is material and relevant in this connection. The order of acquittal must be set aside.

As Mr. Peddie, counsel on behalf of the respondent in this appeal says that the respondent has no further evidence to offer, and his submission will be that in law the holder of a moneylender's licence is not debarred from pawnbroking as part of or in the course of his business, there is no point in referring the case back to the learned Magistrate to hear and determine this point of law. In my opinion the law is quite clear. A "pawnbroker" is defined in section 2 of the Enactment to "mean and include any person who . . . receives any article and . . . advances money upon the same to an amount not exceeding two hundred and fifty dollars" under any agreement that the said article may be afterwards redeemed. The definition must however be read as qualified by subsection (ii) of section 3, namely —

"(ii) For the purpose of this section a person shall not be deemed to act as a pawnbroker in that he makes a loan of any sum of money exceeding one hundred dollars and receives any article in pawn as security for the same, provided that the rate of interest paid or payable upon such loan shall not exceed twelve per centum per annum and that no further or other profit or advantage be taken or agreed upon in respect thereof."

In simple terms the above provisions mean: (a) that if a person makes a loan of any sum over $100 and receives any article in pawn as security, he will not be deemed to have acted as a pawnbroker so long as the interest payable does not exceed a net 12 per centum per annum; (b) that, conversely, if the loan so secured and at whatever rate of interest is under $100, or, if over $100, his profits (including interest) exceeds 12 per cent. per annum, then he will be deemed to have acted as a pawnbroker; (c) that loans exceeding $250, though given on the security of articles pawned, do not come within the Pawnbrokers Enactment, whatever the rate of interest.

There is nothing, however, in the Pawnbrokers Enactment or the Moneylenders Ordinance which entitles a licensed moneylender, as such, to act as a "pawnbroker" unless he is also licensed under section 3 of the Enactment. A pawnbroker, as such, may lend only up to $250; consequently, if he lends more than that amount the provisions of the Moneylenders Ordinance will apply to him: vide section 2(d).

I think the respondent ought to feel grateful to the prosecution for calling a halt to further transactions of this type which appear to have been entered into in disregard of subsections (3) and (4) of section 16 and subsection (2) of section 27 of the Moneylenders Ordinance. The attempt at ingenuity may be defeated by myopia.

I accordingly set aside the order of the Magistrate, and convict the respondent on all charges. On each charge he is fined $200.

Order accordingly.

Solicitors: *Bannon & Bailey.*

SUBRAMANIAM v. KONAR

[C.A. (Thomson C.J., Rigby and Hepworth JJ.) November 11, 1958]

[Ipoh — F.M. Civil Appeal No. 25 of 1958]

Moneylending — Promissory note — Delivery of authenticated copy — Sufficiency of written acknowledgment by borrower to establish that copy handed to borrower was duly authenticated — Moneylenders Ordinance, 1951, s.15(1) and (4).

Moneylending transaction — Intention of parties — When possession passes.

Although the burden of proving that an authenticated copy of a promissory note was handed by the moneylender to the borrower under section 16(1) of the Moneylenders Ordinance, 1951, is on the moneylender, nevertheless a written acknowledgment by the borrower to the effect that before giving his promissory note to the lender a copy thereof authenticated by the lender was delivered and received by the borrower is sufficient, if unrebutted, to establish that the copy which was handed to the borrower was authenticated.

When parties voluntarily go to a solicitor for a moneylending transaction it is quite clear that in the absence of any evidence to the contrary it is the intention of both parties that possession of the money shall not pass from the moneylender to the borrower until everything is done that the parties have come to do and until possession passes the money cannot be said to be lent.

Case referred to:—

(1) *Haji Musa bin Abu Bakar* v. *Prem Singh* F.M. Civil Appeal No. 38 of 1957, (unreported).

COURT OF APPEAL.

S. P. Seenivasagam for the appellant.

B. K. Das for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This is an appeal from a decision of Good J. allowing an appeal from a

decision of the President of the Sessions Court at Ipoh.

The appellant, whom I shall call the borrower, borrowed a sum of money from the respondent who is a licensed moneylender, and whom I shall call the moneylender, and by way of security for the loan executed on 9th June, 1956, promissory note for $1,500 with interest at the rate of 18% per annum. Nothing was paid in respect of the promissory note, and after a written demand for payment had been sent the moneylender commenced the present proceedings on 27th December, 1956, in which he claimed the principal sum and interest due on the promissory note.

Certain parts of the evidence will call for more detailed discussion later. Briefly, however, it was the moneylender's case that on 9th June, 1956, he agreed to lend $1,500 to the borrower on certain terms and that day the parties went to a solicitor's office in Ipoh where in the presence of the solicitor he handed $1,500 to the borrower who there and then by way of security executed a promissory note containing all the terms of the contract. This was countersigned by the lender and in accordance with section 16(4) of the Moneylenders Ordinance an authenticated copy was handed to the borrower which was attested by the solicitor in accordance with section 27 of the Ordinance.

The borrower said that he had received $300 some days previously and that on 9th June, 1956 he only received $985. At first he said he received this sum in the solicitor's office but later he said he received it in a coffee shop. Apart from that his defence was:—

(a) he was not given a copy of the promissory note;

(b) if he was given a copy then it was not authenticated in accordance with section 16(2) of the Ordinance;

(c) if he was given a copy and if it was authenticated then it was not given him until after the money was lent;

(d) if he was given a copy, if it was authenticated and if it was given to him before the money was lent, then the note was bad because it omitted a condition of the loan to the effect that he should give a Bill of Sale over his business in Tapah by way of additional security.

The curious quadricorn thus released into the forensic arena achieved greater success than might have been anticipated. The learned President took an unfavourable view of the borrower's credibility and accepted the moneylender's evidence to the effect that $1.500 was actually handed over in the solicitor's office, that there was no question of any Bill of Sale and that a copy of the promissory note was handed to the borrower. As regards the time of delivery of the copy he said:—

"I think.....the evidence on the case shows that the proper view to take of the transaction is that all the steps in it were so simultaneous that there was a constructive delivery of the copy at the proper time."

He was not, however, satisfied that the moneylender had proved that the copy handed to the borrower was authenticated and he accordingly found himself compelled to dismiss the claim.

Against that decision the moneylender appealed. Good J. allowed the appeal. He took the view that on the evidence the tactical onus of proving that the note was not authenticated had passed to the borrower who had failed to discharge it and he took the view that although physical handing over of the money took place before physical handing over of the copy of the promissory note the money was not actually lent until the borrower had left the solicitor's office with it in his possession.

It is against that decision of Good J. that the borrower has now appealed.

With regard to the question of authentication, the moneylender's evidence, which was uncontradicted and was largely corroborated by the solicitor, was to the effect that the promissory note was prepared in duplicate, one copy being on white paper and the other on pink paper. He signed the white copy in one place and the pink copy in two places. He produced the white copy. This contains three paragraphs. The first paragraph is the actual promissory note signed by both parties; the second paragraph is the statutory certificate under section 27 signed by the solicitor; the third paragraph which is signed by the borrower only contains a receipt for the money and the following statement:—

"I also acknowledge that before receiving the said sum and before giving this promissory note to the lender a copy thereof.....authenticated by the lender was delivered and received by me."

It is not in question that in the first place the burden of proving that an authenticated copy of the note was handed to the borrower lay upon the moneylender. Nevertheless in my opinion the evidence which has been quoted was sufficient, if unrebutted, to establish that the copy which was handed to the borrower was authenticated. There was a written admission by the borrower that he had received an authenticated copy and in the light of this admission the evidence of the moneylender that he had signed something on the pink copy which he did not sign on the white copy. clearly points to what he signed being some form of authentication. The borrower's answer was that he did not receive anything and this was not believed. In the circumstances it is not surprising that he failed to produce the pink copy which the President found in fact was handed to him although (and this fact was not appreciated by the learned President or known to Good J.) he had been served with a notice to produce it. In the circumstances I find myself in entire agreement with Good J. in saying that the learned President was wrong in holding that authentication was not proved.

With regard to the point as to the time of delivery of the note there were three witnesses as to what took place in the solicitor's office. The evidence of the moneylender and the solicitor which was accepted by the learned President, who had the benefit of seeing and hearing the witnesses, was in agreement and was to the effect

that the order in which the events occurred after the body of the note and the annexed paragraphs were completed was as follows:—

(1) the borrower signed;
(2) the moneylender signed;
(3) the money was handed to the borrower;
(4) the solicitor signed the middle paragraph;
(5) the pink copy was then handed to the defendant.

Section 16(1) of the Moneylenders Ordinance, 1951, provides that no security for the payment of money lent by a moneylender shall be enforceable unless a memorandum of the contract has been signed and an authenticated copy of it has been delivered to the borrower before the money is lent and by section 16(4) where the security takes the form of a promissory note that may itself constitute the memorandum of the contract.

In the unreported case of *Haji Musa bin Abu Bakar* v. *Prem Singh* [1] the view was expressed by this Court with regard to circumstances on all fours with those in the present case that the money was not actually lent until the borrower had left the solicitor's office with it in his possession. When parties voluntarily go to a solicitor and a transaction such as has been described takes place it is quite clear that in the absence of any evidence to the contrary it is the intention of both parties that possession of the money shall not pass from the moneylender to the borrower until everything is done that the parties have come to do and until possession passes the money cannot be said to be lent.

In the present case the parties came to the solicitor's office to execute the note and have it attested and for the authenticated copy to be delivered to the borrower. Whatever happened physically to the actual money which was, so to say, put on the table it is beyond reason to suppose that the lender intended to abandon his own possession of it or that possession of it should pass to the borrower until those things were done. The fact that both parties went together voluntarily raises an irresistible inference that such was also the intention of the borrower. And until possession had passed I fail to see how the money could be said to be lent.

The argument is even stronger in the case where, as here, by reason of the borrower not understanding the written language of the note it requires to be attested by a solicitor or some other person in accordance with section 27 of the Ordinance. By that section the solicitor is required to certify that the money has been paid over in his presence. For that purpose it is necessary that the note shall be physically delivered to the solicitor after payment of the money. Here the evidence is silent as to who actually handed the note to the solicitor for this purpose but either it was handed by the borrower who therefore must have been in physical possession of it or it was handed by the moneylender. And if it was handed by the moneylender it does not seem to me to be unduly straining the limits of legal fiction to say that at that stage he was in possession of it not only for himself but also jointly as agent for the borrower.

I am of the opinion that the appeal is without merit and I would dismiss it with costs and would order the deposit in Court to be paid out to the respondent against his taxed costs.

Rigby and **Hepworth JJ.** concurred.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons; Das & Co.*

PUBLIC PROSECUTOR v. JUSOH

[A. Cr. J. (Hashim J.) September 16, 1962]

[Kuala Trengganu — Criminal Appeal No. 6 of 1962]

Criminal Law and Procedure — Prevention of corruption — Consent of Public Prosecutor to prosecute — Statements made under s.15(1), Prevention of Corruption Act — Procedure to be adopted when dealing with such statements — Prevention of Corruption Act, 1961, s.26(1).

Before hearing a case under the Prevention of Corruption Act, 1961, the Court should first see that the provisions of section 26 of the Act have been complied with so as to avoid all the difficulties which may arise from such omission.

The following procedure should be adopted when dealing with statements under section 15(1) of the Prevention of Corruption Act: The Court should bear in mind the provisos to that subsection. It should only admit the statement when it is satisfied that the provisions of that subsection have been complied with. Once the statement is admitted the Court must accept the contents of such statement.

Case referred to:—

(1) *Lyn Hong Yap* v. *Public Prosecutor* [1956] M.L.J. 226.

CRIMINAL APPEAL.

Syed Hamzah bin Tahir (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Hashim J.: This is an appeal by the Public Prosecutor against the order of acquittal of the learned President, Sessions Court at Kemaman.

The respondent was charged under section 4(b) of the Prevention of Corruption Act No. 42 of 1961. At the end of the trial the learned President acquitted and discharged the respondent. From his judgment it would appear that he acquitted the respondent on the ground that respondent's story was "consistent with his innocence irrespective of whether it was the truth or not".

In the course of the trial the prosecution tendered a statement made by the respondent under section 15(1) of the Act. The learned President admitted the statement. In his statement the respondent stated *inter alia* "I then took out two dollars from my pocket and handed the money to the P.C." No where in his judgment did the learned President make any